IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: May 24, 2007

Parties Name

Dr. Manish Sethi and others

..PETITIONERS

VERSUS

State of Punjab and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MRS. JUSTICE NIRMAL YADAV

PRESENT: Mr. Rajiv Atma Ram, Senior Advocate,
with Mr. Vijay Sharma,
Advocate, for the petitioners.

Mr. Rupinder S. Khosla, Addl. A.G., Punjab,
for respondent No. 1.

Ms. Nirmaljit Kaur, Advocate, for
respondents No. 2 and 3.

JASBIR SINGH, J.

Order.

This order will dispose of five writ petitions, i.e., C.W.Ps. No. 5446, 6227, 6411, 6432 and 5752, all of the year 2007, as common question of law and facts is involved in all these cases. For facility of dictating order, facts are being taken from C.W.P. No. 5446 of 2007.

Petitioners are seeking admission in post-graduate degree/diploma courses in medical education, i.e., M.D./M.S./P.G. Diploma, M.D.S. and D.M/ M.Ch. Courses. As per notification, issued by the State of Punjab, respondent No. 1, Baba Farid University of Health Sciences,

Faridkot, respondent No. 2, has been authorized to conduct Common Entrance Test (PGET 2007) for admission to above said courses. Respondent No. 2 has further been authorized to declare result of the entrance test, conduct counselling etc. to complete the process of admission. Consequent to the notification, referred to above, respondent No. 2 has issued prospectus containing details regarding eligibility and procedure for admission in post-graduate courses. As per prospectus, applications to appear in PGET -2007 were to be received by April 11, 2007. Entrance test was to be conducted on April 22, 2007. The result was to be declared on April 26, 2007. Date of first counselling to admit the students was fixed as May 4, 2007, in Government Medical College, Patiala. Before declaration of their result, petitioners came to this Court with a prayer that a writ of certiorari be issued to quash clause 37 of the notification dated March 21, 2007 (Annexure P-1), issued by respondent No. 1 and as shown in part B of the prospectus by respondent No. 2 to fill up seats in post-graduate courses in the year 2007. It is their case that clause 37 of the notification is liable to be set aside being illegal, arbitrary and ultra vires to Article 14 of the Constitution of India.

Upon notice, reply has been filed by respondent No. 1, wherein incorporation of clause 37 in the notification has been justified by stating that the said provision was added with a view to reserve seats, in the above said courses, by way of institutional preference. To support this averment, reliance was placed upon judgments of the Hon'ble Supreme Court in Saurabh Chaudhary and others v. Union of India and others, 2003(4) S.C.T. 867, and in Magan Mehrotra and others v. Union of India and others, 2003 (11) S.C.C. 186.

Before we proceed further in the matter, it is necessary to note down some relevant facts. It is an admitted position that in the State of Punjab, 179 seats in post-grduate medical courses are available in various medical colleges/ educational institutions. As per prevalent policy of the Central Government, 50% of the aforesaid seats are to be filled up by the Union of India, on the basis of merit prepared, in All India level entrance test (in short the All India quota), in which, as per information supplied, 22.5 % seats are reserved for members of the scheduled caste and scheduled tribes. Respondents No. 1 and 2 are supposed to fill up only 89 seats (in short the State quota). 60% of these seats are reserved for the Doctors working with respondent No. 1 and having three years' minimum experience (in short it can be termed as Inservice quota). 40% seats out of the State quota are meant to be filled up on the basis of PGET-2007, from amongst the fresh graduates, which comes to 38 seats only, out of which, 17 seats are reserved for various categories including members of the scheduled caste/backward classes etc. Only 21 seats remain to be filled up from amongst the general category candidates.

Prospectus, issued by respondent No. 2, consists of two parts, i.e., part A and part B. Part A contains general instructions with regard to eligibility conditions, how to move the application, filling of ORM application form, issuance of roll number, conduct of the test, declaration of result etc. Provisions in part B of the prospectus become operative once result is declared. This part contains format of admission application, determination of merit and preference for admission, important instructions to the candidates and notification, issued by respondent No. 1 to fill up seats in post-graduate courses. Relevant provisions of Part B of the prospectus,

which will come up for consideration in the later part of this order are reproduced as under:

> "DETERMINATION OF MERIT AND PREFERENCE FOR ADMISSION
>
> 3.1 Candidates securing at least 50% marks in PGET-2007 will be eligible for admission. However, for SC/BC the eligibility marks shall be 40% instead of 50% in PGET-2007 for the reserve seats for these categories. Further, **as per Hon'ble Supreme Court judgment reservation of any kind is not permissible for Super Specialty courses so these super specialty courses will be open for all categories.** "

Part B contains notification dated March 21, 2007, issued by respondent No. 1 to regulate admissions in post-graduate degree/diploma courses for the session 2007. Relevant provisions of that notification read thus:

> "13. All seats in the Post Graduate courses, except the seats to be filled by the Central Government, in all the Institutions both Government & Private aided, unaided or minority, shall be filled out of the eligible candidates, who are bonafide residents of the State of Punjab. Punjab Resident status of candidates will be determined in terms of the instructions issued by the Government of Punjab in the Department of Personnel (Personnel Policies Branch) vide its circular letter No. 1/3/95-3PPII/9619, dated 6/6/1996 and No. 1/ 2/ 95-3PII/81, dated 1/1/1999. Condition of bonafide residents of the State of

Punjab shall not be applicable to the candidates belonging to the following categories of Punjab residents.

i) to v) xxx xxx xxx xxx

14.In the Government institutions, 50% of the total seats in every such institution shall be filled by the Government of India on all India basis through an all India Competitive Entrance Test. The remaining seats shall be filled through the Post Graduate Entrance Test-2007 (PGET-2007). Out of the remaining seats, 60% seats shall be filled up from amongst the eligible PCMS/PCMS (Dental)/PDES inservice doctors and 40% shall be open to all eligible medical/dental graduates.

(a) For 60% Seats (In Service PCMS/PCMS (Dental)/PDES)"

i. to xi. xxx xxx xxx xxx

(b) For 40% Seats:

i. Medical/Dental graduates who are residents of the State of Punjab, as per instructions of Department of Personnel (PP-II Branch) conveyed vide letter No. 1/3/95-3PPII/9619 dated 6/6/1996 and No. 1/ 2/ 95-3PPII/81 dated 1/1/1999.

ii. Any candidate in State Government employment shall produce a 'No Objection Certificate' from his/her employer."

"18.Candidates securing at least 50% marks in the Common Entrance Test-PGET 2007 shall be eligible for admission. However, for SC/BC candidates, the minimum eligibility marks for admission to reserved seats for the concerned category, shall be 40% instead of 50% in PGET-2007."

Clause 37 of the prospectus is reproduced below:

"37- The candidates who have passed their graduate degree from Medical/ Dental Colleges situated in the State of Punjab except Christian Medical College/ Christian Dental College, Ludhiana, and have qualified PGET 2007, shall be given additional 15% marks of the total marks obtained in the Post Graduate Entrance Test (PGET-2007)."

Petitioners are primarily aggrieved by the provisions as contained in clause 37 of the notification.

Shri Rajiv Atma Ram, Senior Advocate, learned counsel for the petitioners, contended with vehemence that clause 37 of the notification, which is mentioned in Part B of the Prospectus deserves to be quashed, being contrary to the principles laid down by the Hon'ble Supreme Court in Saurabh Chaudhary's case (supra) and also being ultra vires to Article 14 of the Constitution of India. He further states that respondents No. 1 and 2 have virtually reserved all the seats falling in State quota, which is not permissible. He , in the alternative, has submitted that by giving 15% weightage to the candidates, who have passed their graduation degree from medical/dental colleges in the State of Punjab except Christian Medical College, Ludhiana, respondents No. 1 and 2 have virtually excluded the petitioners to get admission against 21 seats, which are meant for open general category candidates. To strengthen his argument, he demonstrated that as per document Annexure P-5,(i.e., declaration of result of PGET-2007) , Hitesh Dhawan, petitioner No. 11, got 19th rank by securing 576

marks. If the weightage is given, as envisaged in clause 37 of the notification, a candidate who got 50th rank, as per result of PGET-2007, by securing 552 marks, and the candidate, who got 90th rank by securing 532 marks, will march over petitioner No. 11. If it factually happens, none of the petitioners will get admission in general open category (21 seats) and admission will be given to those, who are lower in merit. By referring to above mentioned fact, counsel contends that at the level of post-graduate courses, it is not justified to ignore the merit and admit lesser meritorious candidates. To support his contention, he has relied upon ratio of judgment of the Hon'ble Supreme Court in Saurabh Chaudhary's case (supra) and Magan Mehrotra's case (supra).

In reply to the contention raised, Shri Rupinder Khosla, learned Additional Advocate General, Punjab, by referring to the averments made in the written-statement, filed by respondent No. 1, argued that clause 37 has been incorporated in the notification keeping in view ratio of the judgment in Saurabh Chaudhary's case (supra). He further states that by adding clause 37 in the notification, 21 seats have virtually been reserved, by giving benefit to the candidates, on the basis of institutional preference, which was also upheld by their lordships of the Supreme Court in Magan Mehrotra's case (supra). He further states that as per the prevalent policy, out of total 179 seats, 90 seats have gone to the All India quota and only 89 seats are available in the State quota, out of which only 21 have been reserved, by giving institutional preference, that being less than 50% of the total available seats, is perfectly justified. He prays that the writ petition , having no substance, be dismissed.

When this writ petition came up for hearing before this Court

on April 17, 2007, notice of motion was issued after noting following contention of counsel for the petitioners:

> "Counsel for the petitioners cites 'State of Rajasthan and another v. Dr. Ashok Kumar Gupta and others", **1989(1) Supreme Court Cases 93**, to contend that an additional weightage, as provided in Clause 37 of the Notification dated 21.3.2007 (Annexure P-1) to the students, who have passed their MBBS examinations from the Colleges, situated in the State of Punjab except Christian Medical College, Ludhiana, to get admission in post-graudate courses, is violative of Article 14 of the Constitution of India."

Now it is to be seen as to whether it is open to the respondents No. 1 and 2 to give 15 % weightage to those candidates, who have passed their qualifying examinations (MBBS etc.) from the educational institutions, situated within the State of Punjab except Christian Medical College, Ludhiana?

As per prospectus, a candidate to get admission in post-graduate courses, is supposed to have MBBS or BDS degree to his credit and further he must have completed one year's compulsory internship. It is also provided that after the competitive examination, only those candidates shall be eligible to get admission, in post-graduate courses, who have secured at least 50% marks in PGET-2007 (for SC/BC candidates, limit has been fixed at 40%). It is also provided in the prospectus that 50% of the total seats, available with respondent No. 1, shall be filled up by the Government of India on All India basis through competitive entrance test.

It is question for determination, as to whether any reservation can be made for candidates other than Scheduled caste and backward classes, in specialized post-graduate courses in medical education or not? In various judgments, the Hon'ble Supreme Court has held that in above said courses, merit alone should be the criteria. However, by taking note of social circumstances, as are prevalent in the country,Hon'ble Supreme Court has held that 50% out of the available seats can be reserved on the basis of institutional preference. Their Lordships of the Supreme Court were dealing with a similar controversy in Saurabh Chaudhary's case (supra), in which the petitioners were residents of Delhi and have passed their qualifying examination (MBBS etc.) from other States, after getting admission in All India quota. When they moved applications to get admission in post-graduate courses, they were confronted with a condition in the prospectus, issued by the Delhi University, which provides that for admission to post-graduate courses, only Delhi University medical graduates would be eligible against 75% reserved seats. The students of Delhi University, who have taken admission in the University/State under 15% of All India quota, will not be eligible to seek admission in post-graduate degree/diploma course of Delhi University against 75% reserved seats. Above said provision came up for consideration before a Constitutional Bench of the Hon'ble Supreme Court and after considering various judgments including Magan Mehrotra's case (supra), it was observed thus:

> “67. We, therefore, do not find any reason to depart from the ratio laid down by this Court in Dr. Pradeep Jain (supra). The local corollary of our finding is that reservation by way of

institutional preference must be held to be not offending Article 14 of the Constitution of India.

68. However, the test to uphold the validity of a statute on equality must be judged on the touch-stone of reasonableness. It was noticed in Dr. Pradeep Jain's case (supra) that reservation to the extent of 50% was held to be reasonable. Although subsequently in Dr. Dinesh Kumar's case (supra), it was reduced to 25% of the total seats. The said percentage of reservation was fixed keeping in view the situation as then existing. The situation has now changed to a great extent. Twenty years have passed. The country has during this time have produced a large number of Post Graduate doctors. Our Constitution is organic in nature. Being a living organ, it is ongoing and with the passage of time, law must change. Horizons of constitutional law are expanding.

69. Having regard to the facts and circumstances of the case, we are of the opinion that the original scheme as framed in Dr. Pradeep Jain's case (supra) should be reiterated in preference to Dr. Dinesh Kumar's case (supra). Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest."

Their lordships of the Supreme Court in above said case have considered ratio of the judgment in Magan Mehrotra's case (supra), wherein also a similar question, as to whether reservation can be made or

weightage can be given, on account of institutional preference was under consideration. Therein, their lordships of the Supreme Court observed as follows:

> "This Court by a three judge bench considered the question of admission to the medical colleges as well as reservation of seats for residents of the State or students of the same university elaborately in the case of Pradeep Jain (Dr.) v. Union of India. So far as the admission to the postgraduate courses is concerned, the Court held that for admission to the postgraduate courses, it would be eminently desirable not to provide for any reservation based on requirement of residence within the State or on institutional preference. Having said so, the Court went on further to hold that having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to postgraduate courses, a certain percentage of seats may in the present circumstances be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university may be given preference for admission to the postgraduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event <u>exceed 50 percent of the total number of open seats available for admission to the postgraduate course</u>. We are not

> concerned with the other observations made in the aforesaid case since in the case in hand we are concerned only with the admission to the postgraduate course. The aforesaid decision unequivocally indicates that even though it would be ideal not to have any reservation either in residence requirement or on institutional preference but the students passing out from their undergraduate study from a university should have some preferential treatment and it is in that context the aforesaid observation has been made. It may be stated that in the aforesaid case before disposing of the matter all State were duly noticed and those had entered appearance, their contentions were taken into account and finally the matter stood disposed of, as stated above."

In view of ratio of the judgments, as referred to above, it is open to the authorities to reserve, by way of institutional preference seats upto 50% of the available seats. Now in this case it is to be seen as to whether State's reliance on the ratio of judgment in Saurabh Chaudhary's case (supra) and Magan Mehrotra's case (supra) is justified or not? It is not in dispute that 89 seats had fallen to the share of 'State quota', out of which 60% seats are reserved for inservice candidates, fresh graduates are not eligible to compete for those seats. There remain only 38 seats , out of which 17 seats are reserved for SC/BC etc. In the process, only 21 seats remain for general category candidates. If contention of counsel for respondents No. 1 and 2 is accepted, this would mean reservation of all 21 seats, by way of institutional preference, which we find is not permissible

in view of the law laid down by their lordships of the Supreme Court in Magan Mehrotra's case (supra) and Saurabh Chaudhary's case (supra). As per law laid down, the State Government is competent to reserve upto 50% seats of the available seats, which are only 21 in this case. All 21 seats cannot be reserved by giving weightage, on the basis of institutional preference. Respondents No. 1 and 2 could have reserved only 11 seats, out of the general category seats, mentioned above, even to the total exclusion of the petitioners, in view of settled law by the Hon'ble Supreme Court. As such reservation of all 21 seats is held not justified.

We can deal with the dispute from another angle also. In the prospectus issued, to fill up seats in postgraduate courses, it is nowhere mentioned that 21 seats (40% of the seats falling to the State quota) are being reserved, by way of institutional preference. In clause 37, it is only mentioned that 15% weightage will be given to those graduates, who have got their qualifying degree from medical/dental colleges, situated in the State of Punjab, except Christian Medical College, Ludhiana. Once no seat is shown to have been reserved by way of institutional preference, we hold that giving of 15 % weightage to the graduates from the State of Punjab is violative of the principles of equality before law, as such the same cannot be sustained.

Grant of weightage to the graduates, who have got qualifying degree from the concerned State, upto 10%, came up for consideration before the Hon'ble Supreme Court in State of Rajasthan and another v. Ashok Kumar Gupta and others, AIR 1989 Supreme Court 177. In that case, the competent authority, to fill up seats in postgraduate courses in medical education, had decided to give 5% weightage to those, who had got

MBBS degree from University of Rajasthan and further weightage of 5% was given to those who have studied in a particular medical college, if in that very college they were seeking admission in postgraduate courses. In that case also, it was contention of the petitioners that if such a benefit is approved, the meritorious candidates will be ignored and those, who were lower in merit, will jump over the deserving candidates, on account of weightage given to them. After noticing entire case law on the subject, their lordships of the Supreme Court observed thus:

> "Thus, after having given 5% weightage on the ground of institutional preference that a candidate has passed his final MBBS Examination from the University of Rajasthan, further 5% weightage on the ground that he has passed his MBBS final examination from the Medical College where he seeks admission, in Post-Graduate course, is unreasonable and arbitrary and does not stand the touchstone of Article 14 of the Constitution. If 10% weightage is given as aforesaid it will come to 275 marks and with this increase in marks no candidate from University other than University of Rajasthan can get admission to Post-Graduate course in any one of the medical colleges. It is against the equality clause as it amounts to cent percent reservation as 10% weightage in admission to Post-Graduate course to a student, 5% weightage on the University basis and 5% on the institutional basis, amounts to total exclusion of candidates of other Universities. We have already referred to the admissions for the years 1986 and 1987 and at the cost of repetition we may say that a look at Schedules 'A'

> and 'B' regarding admissions in SMS Medical College, Jaipur in Post-Graduate courses for the years 1986 and 1987 respectively will show that not a single candidate from the University other than University of Rajasthan could seek admission."

As per information, supplied to us at the time of arguments, above said opinion of the Hon'ble Supreme Court still holds the fields.

Otherwise also, if it was intention of respondent No. 1 to reserve 21 seats in postgraduate courses, by way of institutional preference, then it should have been so stated in the prospectus. In that event, the petitioners may not have even applied for admission in postgraduate courses. In view of non-mentioning of that fact, they had appeared in the examination and spent more than Rs. 5,000/-, each in getting the prospectus and moving application to get admission, besides doing hard work to qualify the same. If the principle as envisaged in clause 37 of the notification is applied, then they do not have any chance to get admission. They were allowed to appear in the PGET-2007, however, their chance to get admission has been snatched away from them in a very arbitrary manner by allowing 15% weightage to the graduates from the State of Punjab except CMC Ludhiana.

As the seats were not shown to have been reserved by way of institutional preference, in that event it was incumbent for respondents No. 1 and 2 to fill up those seats entirely on the basis of merit. Their lordships of the Supreme Court in Mridul Dhar (minor) and another v. Union of India and others, (2005) 2 Supreme Court Cases 65, has observed thus:

> "13. For granting admission, the merit determined by competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode."

The Medical Council of India in Regulation No. 9 of the Postgraduate Medical Education Regulations, 2000, has specifically stated that students, for postgraduate medical courses, shall be selected strictly on the basis of their academic merit. It has further been stated that whenever any entrance test is conducted, to fill up above said seats, the minimum percentage of marks for eligibility for admission to postgraduate medical courses shall be 50% for all the candidates. Course in question is very specialized and sophisticated one. It is expected that the admission should be given only to those, who are deserving candidates, keeping in view their merit. Only then they can contribute in progress of the country and may help in ameliorating plight of the poor patients. As has been stated in the earlier part of the judgment, 21 seats in State quota were not shown to have been reserved by way of institutional preference, as such these seats are supposed to be filled up on the basis of marks obtained by the candidates in PGET-2007.

As per information supplied, total seats available are 179. Ninety seats have gone to All India quota, out of which 22.5 % seats are reserved for Scheduled caste/Backward classes etc. Out of the remaining 89 seats in State quota, 51 seats are reserved for inservice candidates and 17 seats are further reserved for SC/BC candidates and if contention of counsel for the respondent – State is accepted, then remaining 21 seats shall also be deemed

to have been reserved , by way of institutional preference. In that event, total reservation for Scheduled Castes/backward classes candidates, inservice candidates and reservation by way of institutional preference would come to 70.5%, which we find is too excessive and keeping in view established law, the same cannot be sustained.

In view of facts mentioned above, clause 37 of the notification No. 5/8/2007-3HB3/1334, dated March 21, 2007 (Annexure P-1), as mentioned in the prospectus for PGET-2007 is quashed being contrary to the law laid down by the Hon'ble Supreme Court in Magan Mehrotra's case (Supra) and also reiterated in Saurabh Chaudhary's case (supra) and being ultra vires to the mandate of Article 14 of the Constitution of India. However, keeping in view ratio of the judgments, referred to above, liberty is granted to respondents No. 1 and 2 to reserve, by way of institutional preference, to the exclusion of the petitioners, 11 seats out of 21 seats available for general category candidates.

Writ petitions stand allowed in the above mentioned terms.

(Jasbir Singh)
Judge

(Nirmal Yadav)
Judge

May 24, 2007.
DKC